

UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF MASSACHUSETTS

FILED  
FEB 10 2004  
U.S. DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

FRANCIS E. DYBES, AND OTHERS  
SIMILARLY SITUATED,

Plaintiffs

v.

DELTA ELEVATOR SERVICE  
CORPORATION d/b/a  
DELTA/BECKWITH ELEVATOR  
COMPANY,

Defendants

C.A. FILE NO. 04 CV 10076 MLW

**DEFENDANT'S MOTION FOR LEAVE TO FILE A REPLY TO**  
**PLAINTIFF'S OPPOSITION TO**  
**DEFENDANT'S MOTION TO DISMISS**

Defendant Delta Elevator Service Corporation d/b/a/ Delta/Beckwith Elevator Company ("Defendant") hereby moves for leave to file a Reply Brief to Plaintiff's Opposition to Defendant's Motion to Dismiss ("Opposition"). As grounds for its Motion, Defendant submits that (1) Plaintiff's contention in his Opposition that two important facts are undisputed is inaccurate and misleading, (2) that Plaintiff's arguments mischaracterize the holding of the Arbitrator's Award, which of necessity was a determination that the collective bargaining agreement applied to the dispute, and (3) that Plaintiff's reasoning about the effect of NLRB deferral pursuant to *Collyer Insulated Wire* is incorrect. Defendant contends that a succinct Reply Brief will assist the court in disposing of the motion appropriately.


**LOCAL RULE 7.1(A)(2) CERTIFICATION**

Pursuant to Local Rule 7.1(A)(2), undersigned counsel certifies that on February 3, 2004, she conferred with Plaintiffs' counsel, and Plaintiff's counsel has agreed that Plaintiff will not oppose Defendant's Motion for Leave to File a Reply Brief.

WHEREFORE, Defendant respectfully request that this Court grant Defendant's Motion for Leave to File a Reply Brief.

Burlington, Vermont.

February 3, 2004

  
Patricia M. Sabalis  
BBO # 436730  
Downs Rachlin Martin PLLC  
199 Main Street, P.O. Box 190  
Burlington, VT 05402-0190  
(802) 863-2375

Attorneys for Delta Elevator Service  
Corporation d/b/a/ Delta/Beckwith Elevator  
Company

BTV 257716.4

UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF MASSACHUSETTS

02/04/2004 - 4 A.M. 24

FRANCIS E. DYBES, AND OTHERS  
SIMILARLY SITUATED,

Plaintiffs

v.

DELTA ELEVATOR SERVICE  
CORPORATION d/b/a  
DELTA/BECKWITH ELEVATOR  
COMPANY

Defendants

C.A. FILE NO. 04 CV 10076 MLW

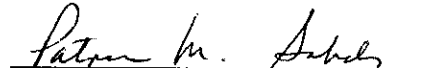
**CERTIFICATE OF SERVICE**

I hereby certify that on this day I served Defendant's Motion for Leave to File a Reply to Plaintiff's Opposition to Defendant's Motion to Dismiss via first-class mail, prepaid and addressed as follows:

Michael J. Doheny, Esq.  
Segal, Roitman & Coleman  
11 Beacon Street, Suite 500  
Boston, MA 02108

Burlington, Vermont.

February 3, 2004

  
Patricia M. Sabalis  
BBO # 436730  
Downs Rachlin Martin PLLC  
199 Main Street, P.O. Box 190  
Burlington, VT 05402-0190  
(802) 863-2375

BTV.257777.2

DOWNS  
RACHLIN  
MARTIN PLLC